existence, it would be well to enhance the jurisdiction of Munsiffs. The Panchayat Court Judges might also be empowered to try cases involving sums up to Rs. 100. That would enable the Munsiffs to try cases in which the Government are parties and thereby reduce the arrears in the District Courts. More Panchayat Courts should also be established.

Before enhancing the jurisdiction of the Panchayat Court Judges, a committee should be appointed to enquire into and report on the working of the existing courts. The enhancement of jurisdiction need be sanctioned only after considering such a report.

Panchayat Court Judges and Bench Magistrates were appointed without any regard whatever to their qualifications ; and no qualifications had been prescribed. Sometimes even illiterate men had been appointed on the recommendation of the Dewan Peishkars. Some of the men so appointed were not beyond temptation and would stoop to receive bribes. Certain minimum qualifications should be prescribed; and the men selected should also be well-to-do and of some status.

People were put to inconvenience on account of the absence of adhesive stamps of Re. 1 and Rs. 2 denominations. On the decrees issued by the High Court and on *vakkalats* filed before that court and before the Government, people had to affix 4 half-rupee stamps. Rs. 2 stamp-paper was available only in the District Courts. This was inconvenient to the litigants in the mofussil parts. The member therefore prayed that Rs. 2 and Re. 1 labels be introduced.

The Vakils Regulation needed amendments. The number of vakils was on the increase and each court had more vakils than necessary. The maximum number of vakils for each court should be fixed. The Law College might even be closed for a few years. The second grade pleaders should be given permission to plead in District Courts.

In conclusion, the member referred to the President's refusal to grant permission to two members to speak about the proposed registry of lands to the Brooke Bond Company. They were, however, subsequently permitted to speak. The policy of placing limitations on the privileges of the members was not good. It was derogatory to the prestige of the House and the President. On the other hand, it was necessary to enhance the powers of the Assembly by effecting speedy reforms.

Lastly, he congratulated the Government on the publication of the Statement of Action taken on the representations made at the previous session.

DEWAN'S REPLY: Mr. Raman Pillai, that is a very interesting soliloquy to which you treated me and I have no doubt that, if I am allowed to soak it in, within the next few months I shall be able to pick up a hint or two. There is one thing which I must ask you-and you will excuse me if I ask you that—and that is for the Government to try to interfere with the High Court in the exercise of judicial functions. Also as to appointing Chief Justices as Dewans. It is true that there are conflicting decisions. Conflicting decisions exist all the world over and—I suppose-will continue to exist. If not, I am afraid half the work of lawyers would disappear. I am equally afraid I cannot make all the judges think alike.

For the rest, I will go into your representation very carefully at peace and leisure.

35. Judicial Reforms.

MR. V. K. EASO (*Member, Karunagapalli taluk, Group I*) said that the subject of judicial reforms had been dealt with at several previous sessions of the Assembly in some shape or other. Many of the evils existing in the judicial administration could be eradicated if the officers, especially the High Court Judges, were properly selected. The High Court Judges should be men of exceptional ability and exemplary character and the Government should discountenance the idea of communal representation. In support, he quoted Syed Amir Ali's statement that "Judicial appointments are not made to represent either religious communities or political factions." The High Court was the highest tribunal in the State just like the Privy Council for the British Empire. If vacancies arose there, the best available men should be appointed. Preference should, if necessary, be given to District Judges of proved ability and character. If the best men were available only in the bar, the selection should be made from among them. There was no objection to select men even from outside Travancore if proper men could not be found within the State.

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District Judges should as a rule be recruited only by promotion of Munsiffs. Direct recruitment from the bar would be a serious blow to able, hard-working and deserving Munsiffs in service, especially when the men so recruited happened to be their juniors. Secondly, a thorough knowledge of the routine and departmental rules, a ripe experience to handle evidence and form correct conclusions were indispensible for a successful District Judge. That could be secured only if Munsiffs were appointed as District Judges. A rigid rule even prohibiting absolutely direct recruitment from the bar to the District Judge's cadre will make the Munsiff's place more attractive to the lawyer.

The practice of appointing clerks of the High Court as Munsiffs should be discontinued. Munsiffs should invariably be recruited from the bar. A man must have been a lawyer for at least five years before he is appointed as Munsiff. Otherwise, he could not be expected to have a thorough insight into the working of the law. The Munsiff was a hard-worked officer. He had to turn out double or even treble the work of a lawyer. To make a Munsiff's place attractive, it was necessary to revise the scale of pay and raise the minimum to Rs. 300.

In giving promotions, mere seniority should not be the sole guiding principle. Really able, deserving and intelligent Munsiffs should be encouraged. That could be done by creating an efficiency bar in the Munsiff's cadre. The Munsiffs could then be induced to show better outturn and a healthy rivalry would be set up. That would also prove an indirect remedy for the much lamented law's delays. The principle had been adopted in British India.

Second grade pleaders who had passed the Matriculation Examination and who attended the Law College prior to the year 1084 should be allowed to practice in District Courts. Till the year 1077, students who had passed the Fifth Form were admitted to the Second Grade Pleaders' Class. In that year, another rule was passed to the effect that Matriculates who had passed the Second Grade Pleadership Examination and who had put in five years' practice at the bar could appear for the First Grade Pleadership Examination. That rule was repealed in 1084 to the utter dismay of those who had already attended the Law College. Although two or three chances were then given to them to appear for the First Grade Pleadership Examination, many could not avail themselves of those chances. The rule was unjust to those who joined the Law College prior to 1084. Those who were affected thereby should therefore be allowed to practice in the District Courts.

There was no necessity for a *Civil Courts' Guide* for Travancore when there was a Civil Procedure Code prescribing the procedure to be followed in civil courts. It was brought into force in the face of many protests made through the Legislative Council and the Sri Mulam Popular Assembly. It was not a statute and could safely be done away with especially as the new Civil Procedure Code had been brought into force.

There was one meaningless provision in the *Civil Courts' Guide* which caused great inconvenience to the litigant public. Under Rule 71 of the *Guide*, all interlocutory applications had to be supported by affidavits. Applications for adjournments were included as interlocutory applications. Adjournment applications were too numerous and the grounds on which such applications were made were false in the majority of cases. It was indeed inadvisable that such false things be supported by solemn declarations in the shape of affidavits. Secondly, affidavits should be sworn before a Gazetted officer, a Village Panchayat Court Judge, a member of the Legislative Council or the Sri Mulam Popular Assembly or a *Provertikar*. This was an unnecessary provision. Affidavits should be done away with for filing adjournment applications ; or if that could not be done, the vakils engaged for the cases concerned should be empowered to have affidavits sworn before them.

The member next dealt with the law's delays. It would be well to appoint a Law's Delays Committee the majority of the members on the Committee being Munsiffs and Munsiffs' Court vakils of standing who have had experience in conducting original cases and one or two High Court Judges.

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Whatever the conclusions of the committee, the fact that the Munsiffs' were over-worked could not be gainsaid. Any additional work assigned to them would simply make it impossible for them to get through their work. The average number of cases in a Munsiff's Court was 800 civil suits and over 1,000 small cause cases. It would be impossible for an average man to finish more than 500 cases of each sort. The only remedy for delay was therefore to establish more Munsiffs' Courts.

In the District Courts too, the number of cases, original and appellate, was annually on the increase. Two or three more District Courts at convenient centres were absolutely necessary. If District Courts could not be established, Sub-Courts might be established as in British India, which would lighten the burden of District Judges and thereby minimise delays.

The expenses that the clients had to incur in conducting cases were heavy. Corruption was prevalent among the members of the ministerial staff and the process establishment attached to the several courts. Stringent instructions should be issued to the presiding officers to enquire into the malpractices brought to their notice and take rigorous steps to check them.

A large amount had to be spent in the trial court to procure attendance of witnesses and in the execution court in connection with the execution of decrees. This was due to the laxity on the part of the process servers who had very often to be tipped. A series of processes had to be issued ; and every time a fresh process was applied for, fresh process fee, *batta*, etc., had to be paid. The member pleaded that the parties should be asked to deposit process fee, *batta*, etc., only once to procure the attendance of the witnesses whose evidence was wanted. The courts should take up responsibility for summoning the witnesses till they were examined. Default in attendance should be followed by the enforcement of the plenary provisions against defaulters. That would no doubt entail some additional expenditure by the Government, who, if they could not afford to incur it, might even raise the court fee leviable from 5 per cent. to 6, 7 or even 7½ per cent.

There was inordinate delay in the execution of decrees. There were instances where they had been pending for 10 to 15 years. The main reason for the delay was the dismissal of execution applications on flimsy grounds. Another reason was that notices were not properly served. To remove those defects, the courts should be held responsible for the execution of a decree once an application had been made for it. Processes should issue from the courts on their own initiative without the parties themselves moving in the matter. That would also stop corruption among process servers. Judgment-debtors arrested on warrants have to be kept under the custody of peons. In actual practice, it was never done and the debtors were freely allowed to be at large if the peons were tipped. If, however, the arrested persons failed to appear at the expiry of the mosul, the peons reported that they had escaped from custody where upon criminal proceedings would be started. Such proceedings seldom ended in conviction. Debtors arrested on warrants should be set at large only on their application for mosul and during that period they should be deemed to be under custody. If they failed to appear voluntarily after the expiry of the mosul, the local Police Inspector should start criminal prosecution against them.

In regard to the sale of immoveable property in auction in satisfaction of decrees, the member stated that, if for any reason, the court could not sit on the day notified for sale, a fresh proclamation had to be issued at the cost of the plaintiff fixing another date for auction. That was unnecessary. The subsequent dates should be notified by the courts in the same way as adjourned cases.

Another rule that caused inconvenience and annoyance to the judgment creditor was that, in the absence of bidders, a notice had to be issued to the debtor for obtaining his consent to the creditor himself bidding in auction. Such notices were never properly served as the debtor generally evaded service. That rule should be abrogated.

In conclusion, the member prayed that the above suggestions should be considered sympathetically by the Government as parties to civil suits were put to much difficulty in not getting even a portion of the court costs expended by them.

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DEWAN'S REPLY : Mr. Easo, I am quite dazed and bewildered at the vast variety of subjects over which you have travelled at headlong speed such as the Privy Council, High Court Judges, Munsiffs' Courts, process servers, *vakkalats* and what not. I do not know which way to turn. You must excuse me if I do not make any particular pronouncement on any particular point or group of points you have specially raised. I shall ask the Law Member what he has to say in regard to your suggestions and wait and see before I decide on the issues raised by you.

36 Administration of Civil Justice.

Mr. K. SANKARA PANIKKAR (*Member, Ambalapuzha taluk, Group II*) spoke about the difficulties caused to the litigant public by certain provisions in the *Civil Courts' Guide* and the Civil Procedure Code. Under Rule 55 of Order XXI, when a property is attached by a decree-holder but further proceedings are not taken due to laches on his part, the application for execution is rejected. This provision was not in the old Civil Procedure Code and was a new addition. The effect was that it helped the decree-debtor to defeat the decree-holder while the real object of an attachment was to prevent such conduct on the part of the decree-debtor. The attachment ceased when the application for execution was struck off the file. That enabled the decree-debtor to alienate the property.

Secondly, if a decree-holder failed, after attachment of a property, to pay either the notice fee or other dues, the application for execution was struck off the file and consequently, the attachment also ceased. That was not proper. Laches on the part of the decree-holder subsequent to attachment should not invalidate the attachment already made. It should therefore be ruled that, till the recovery of the decree debt, the attachment should be in full force and should not be affected by limitation. If that was not feasible, the attachment should be in force for a period of 6 years from the date of attachment. It should also be ruled that rejection of an execution application would not affect the attachment already made.

Under sub-section 4 of Section 47 of the Civil Procedure Code, a decree-debtor arrested on warrant could be released on bail if he intimated to the court his intention of presenting an insolvency petition within a period of one month. That provision entailed hardship on the decree-holder as he had to get relief in the Insolvency Court.

Lastly, the member prayed for provisions being made in the *Civil Courts' Guide* to the following effect :—

(i) Affidavits should not be insisted on for filing adjournment petitions.

(ii) A period of 10 days should be allowed before an application for issue of process was rejected for default in payment of process fees.

(iii) Production of copies of *chittas* should not be insisted on for attachment of immoveable property, as the parties were responsible for subsequent mistakes in Survey Numbers and area.

(iv) Production of the Sub-Registrar's encumbrance certificate should not be insisted on before a property was sold in auction. The encumbrance certificate contained the endorsement "Sub-Registrar is not responsible for the correctness" and was hardly necessary.

(v) Civil courts should be supplied with survey plans, measurement sketches and survey instruments. Under the existing practice, if a commission was appointed to ascertain the area of a piece of land or to divide it, the *Provertikar* had to be summoned and *batta* paid to him.

(vi) Copies of sale *sannads* and auction lists should be forwarded to the *Provertikars* concerned.

(vii) Applications for copies of records in appeal cases should not be rejected until after expiry of a period of 15 days.

(viii) Decree-debtors should be given a period of two months for depositing the decree debt after an immoveable property was sold in auction. That could not cause any loss to the decree-holder inasmuch as he got 5 per cent. commission on the purchase money.

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